

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIFTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

and

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO : 16711 of 2004

Between:

K.K. Balu, S/o K.P. Kannaiah Chettiar,
Company Law Board, Ministry of Company Affairs, Government of India, O/o
Company Law Board, Southern Region Bench, 5th Floor Shastri Bhavan, A-Wing,
26 Haddows Road, Chennai-006.

..... PETITIONER

AND

1.The District Consumer Forum, Ongole, Prakasam District, Andhra Pradesh.
2.V.S.R.CH. Mohan S/o. Ch.V. Ram Mohana Rao
R/o. Plot No. 23, Road No.5, Sri Vidya Colony, Kakainada, E.G. District.

(R2 is impleaded as per court order dt. 24-9-2004 in WPMP 22671 of 2004.)

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or directions, more particularly one in the nature of writ of certiorari as under: a) Call for the records relating to and connected with the order dated 19-3-2004 passed in C.D.No. 265 of 2003 against the Petitioner by the 1st Respondent and quash or set aside by holding it as unsustainable and arbitrary, illegal and violative of Section 10 E , 10 E (4b), 10 E (4c), 10F of Companies Act 1956 b) And against the Apex Court decision reported in 1999 (2) SEC page 577 and violative of fundamental rights guarantee of under the Constitution of India.

Counsel for the Petitioner: Mr. KANTHI NARAHARI

Counsel for the Respondents: None appeared.

The Court made the following :

ORAL ORDER:

(per The Honourable Sri Devinder Gupta, the Chief Justice)

Respondents are served and are absent despite service.

Petitioner before us is a Member of Company Law Board, Southern Region Bench and was impleaded as second respondent in the complaint filed by the second respondent herein before the first respondent, and, is aggrieved by the order passed by the first respondent directing the appellant also to pay Rs.15000/- with interest at the rate of 18% per annum from the date of deposit till the date of realization and also to pay an amount of Rs.5,000/- towards mental agony and Rs.1,000/- towards cost of litigation in C.D.No.265 of 2003.

C.D.No.265 of 2003 was filed by the second respondent alleging that he had deposited an amount of Rs.15,000/- with M/s. Nagarjuna Finance Limited, a Company incorporated under the Companies Act, 1956, having its Branch Office at Ongole on 11.8.1998 for a period of 36 months, which was repayable with interest. It is alleged that request was made for payment of the amount, which was not paid by the Company. Company had sent to the Company Law Board a scheme for payment. Claim of the complainant was not opposed by the Company. The complaint of the second respondent was considered by the President, District Forum, Ongole, who on the basis of documents marked before him as Exs. A1 and A2 held that the documents clearly establish complainant's claim and concluded that there was deficiency of service on the part of the opposite parties. Needless to add that appellant was impleaded as second respondent and nothing was alleged or observed against the Member, Company Law Board as to how and in what

manner, he was responsible for any deficiency in service. The operative part of the order of the President, District Forum, Ongole is directing the Company as well as Member, Company Law Board to pay the amounts along with costs and damages. Such an order passed by the first respondent against the petitioner herein has nothing to do with the transaction between the second respondent and the Company, and, is nothing, but, an arbitrary order having been passed without any application of mind, and, has to be held as totally perverse order against the writ petitioner. It cannot be sustained in law. Accordingly, Writ Petition is allowed and that part of the order dated: 19-3-2004 passed in C.D.No.265 of 2003 by the first respondent, which directs the writ petitioner herein to satisfy the claim of the second respondent, is quashed and set aside. No costs.

A copy of the order passed by the first respondent, which is under challenge in this Writ Petition, as well as a copy of our order be sent to the President, State Consumer Disputes Redressal Commission, Hyderabad for his information.

DEVINDER GUPTA, C.J.

05.11.2004.

C.V.RAMULU, J.

VR.

To

1. The District Consumer Forum, Ongole, Prakasam District, Andhra Pradesh.
2. Two CCs to Government Pleader for Civil Supplies, High Court Buildings, Hyderabad (OUT).
3. Two CD copies.